108TH CONGRESS
2D SESSION

S. 2311

To provide for various energy efficiency programs and tax incentives, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 8, 2004

Ms. SNOWE (for herself, Mrs. FEINSTEIN, Mr. BINGAMAN, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To provide for various energy efficiency programs and tax incentives, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Efficient Energy Through Certified Technologies and Electricity Reliability (EFFECTER) Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—TAX INCENTIVES

SEC. 101. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 179A the following new section:

"SEC. 179B. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

''(a) IN GENERAL.—There shall be allowed as a deduction an amount equal to the cost of energy efficient

commercial building property placed in service during the taxable year.

''(b) MAXIMUM AMOUNT OF DEDUCTION.—The deduction under subsection (a) with respect to any building for the taxable year and all prior taxable years shall not exceed an amount equal to the product of—

''(1) $2.25, and

''(2) the square footage of the building.

''(c) DEFINITIONS.—For purposes of this section—

''(1) ENERGY EFFICIENT COMMERCIAL BUILDING PROPERTY.—The term 'energy efficient commercial building property' means property—

''(A) which is installed on or in any building located in the United States,

''(B) which is installed as part of—

''(i) the lighting systems,

''(ii) the heating, cooling, ventilation, and hot water systems, or

''(iii) the building envelope, and

''(C) which is certified in accordance with subsection (d)(4) as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50 percent

or more in comparison to a reference building which meets the minimum requirements of Standard 90.1–2001 using methods of calculation under subsection (d)(2).

A building described in subparagraph (A) may include any residential rental property, including any low-rise multifamily structure or single family housing property which is not within the scope of Standard 90.1–2001.

''(2) STANDARD 90.1–2001.—The term 'Standard 90.1–2001' means Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (as in effect on April 2, 2003).

''(d) SPECIAL RULES.—

''(1) PARTIAL ALLOWANCE.—

''(A) IN GENERAL.—Except as provided in subsection (f), if—

''(i) the requirement of subsection (c)(1)(C) is not met, but

''(ii) there is a certification in accordance with subsection (d)(4) that any system referred to in subsection (c)(1)(B) satisfies the energy-savings targets estab-

lished by the Secretary under subparagraph (B) with respect to such system,

then the requirement of subsection (c)(1)(C) shall be treated as met with respect to such system, and the deduction under subsection (a) shall be allowed with respect to energy efficient commercial building property installed as part of such system and as part of a plan to meet such targets, except that subsection (b) shall be applied to such property by substituting '$.75' for '$2.25'.

''(B) REGULATIONS.—The Secretary, after consultation with the Secretary of Energy, shall establish a target for each system described in subsection (c)(1)(B) which, if such targets were met for all such systems, the building would meet the requirements of subsection (c)(1)(C).

''(2) METHODS OF CALCULATION.—The Secretary, after consultation with the Secretary of Energy, shall promulgate regulations which describe in detail methods for calculating and verifying energy and power consumption and cost, based on the provisions of the 2005 California Nonresidential Alternative Calculation Method Approval Manual or, in the case of residential property, the 2005 California

Residential Alternative Calculation Method Approval Manual. These regulations shall meet the following requirements:

''(A) In calculating tradeoffs and energy performance, the regulations shall prescribe the costs per unit of energy and power, such as kilowatt hour, kilowatt, gallon of fuel oil, and cubic foot or Btu of natural gas, which may be dependent on time of usage. If a State has developed annual energy usage and cost reduction procedures based on time of usage costs for use in the performance standards of the State's building energy code before the effective date of this section, the State may use those annual energy usage and cost reduction procedures in lieu of those adopted by the Secretary.

''(B) The calculation methods under this paragraph need not comply fully with section 11 of Standard 90.1–2001.

''(C) The calculation methods shall be fuel neutral, such that the same energy efficiency features shall qualify a building for the deduction under this section regardless of whether the heating source is a gas or oil furnace or an electric heat pump. The reference building for

a proposed design which employs electric resistance heating shall be modeled as using a heat pump.

''(D) The calculation methods shall provide appropriate calculated energy savings for design methods and technologies not otherwise credited in either Standard 90.1–2001 or in the 2005 California Nonresidential Alternative Calculation Method Approval Manual, including the following:

''(i) Natural ventilation.

''(ii) Evaporative cooling.

''(iii) Automatic lighting controls such as occupancy sensors, photocells, and time-clocks.

''(iv) Daylighting.

''(v) Designs utilizing semi-conditioned spaces which maintain adequate comfort conditions without air conditioning or without heating.

''(vi) Improved fan system efficiency, including reductions in static pressure.

''(vii) Advanced unloading mechanisms for mechanical cooling, such as multiple or variable speed compressors.

''(viii) The calculation methods may take into account the extent of commissioning in the building, and allow the taxpayer to take into account measured performance which exceeds typical performance.

''(ix) On-site generation of electricity, including combined heat and power systems, fuel cells, and renewable energy generation such as solar energy.

''(x) Wiring with lower energy losses than wiring satisfying Standard 90.1–2001 requirements for building power distribution systems.

''(3) COMPUTER SOFTWARE.—

''(A) IN GENERAL.—Any calculation under paragraph (2) shall be prepared by qualified computer software.

''(B) QUALIFIED COMPUTER SOFTWARE.—For purposes of this paragraph, the term 'qualified computer software' means software—

''(i) for which the software designer has certified that the software meets all procedures and detailed methods for calcu-

lating energy and power consumption and costs as required by the Secretary,

''(ii) which provides such forms as required to be filed by the Secretary in connection with energy efficiency of property and the deduction allowed under this section, and

''(iii) which provides a notice form which documents the energy efficiency features of the building and its projected annual energy costs.

''(4) ALLOCATION OF DEDUCTION FOR PUBLIC PROPERTY.—In the case of energy efficient commercial building property installed on or in public property, the Secretary shall promulgate a regulation to allow the allocation of the deduction to the person primarily responsible for designing the property in lieu of the public entity which is the owner of such property. Such person shall be treated as the taxpayer for purposes of this section.

''(5) NOTICE TO OWNER.—Each certification required under this section shall include an explanation to the building owner regarding the energy efficiency features of the building and its projected

annual energy costs as provided in the notice under paragraph (3)(B)(iii).

''(6) CERTIFICATION.—

''(A) IN GENERAL.—The Secretary shall prescribe the manner and method for the making of certifications under this section.

''(B) PROCEDURES.—The Secretary shall include as part of the certification process procedures for inspection and testing by qualified individuals described in subparagraph (C) to ensure compliance of buildings with energy-savings plans and targets. Such procedures shall be comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems.

''(C) QUALIFIED INDIVIDUALS.—Individuals qualified to determine compliance shall be only those individuals who are recognized by an organization certified by the Secretary for such purposes.

''(e) BASIS REDUCTION.—For purposes of this subtitle, if a deduction is allowed under this section with respect to any energy efficient commercial building property,

the basis of such property shall be reduced by the amount of the deduction so allowed.

''(f) INTERIM RULES FOR LIGHTING SYSTEMS.—Until such time as the Secretary issues final regulations under subsection (d)(1)(B) with respect to property which is part of a lighting system—

''(1) IN GENERAL.—The lighting system target under subsection (d)(1)(A)(ii) shall be a reduction in lighting power density of 25 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 (not including additional interior lighting power allowances) of Standard 90.1–2001.

''(2) REDUCTION IN DEDUCTION IF REDUCTION LESS THAN 40 PERCENT.—

''(A) IN GENERAL.—If, with respect to the lighting system of any building other than a warehouse, the reduction in lighting power density of the lighting system is not at least 40 percent, only the applicable percentage of the amount of deduction otherwise allowable under this section with respect to such property shall be allowed.

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable

percentage is the number of percentage points (not greater than 100) equal to the sum of—

"(i) 50, and

"(ii) the amount which bears the same ratio to 50 as the excess of the reduction of lighting power density of the lighting system over 25 percentage points bears to 15.

"(C) EXCEPTIONS.—This subsection shall not apply to any system—

"(i) the controls and circuiting of which do not comply fully with the mandatory and prescriptive requirements of Standard 90.1–2001 and which do not include provision for bilevel switching in all occupancies except hotel and motel guest rooms, store rooms, restrooms, and public lobbies, or

"(ii) which does not meet the minimum requirements for calculated lighting levels as set forth in the Illuminating Engineering Society of North America Lighting Handbook, Performance and Application, Ninth Edition, 2000.

''(g) REGULATIONS.—The Secretary shall promulgate such regulations as necessary—

''(1) to take into account new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings under this section, and

''(2) to provide for a recapture of the deduction allowed under this section if the plan described in subsection (c)(1)(C) or (d)(1)(A) is not fully implemented.

''(h) TERMINATION.—This section shall not apply with respect to property placed in service after December 31, 2009.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) of the Internal Revenue Code of 1986 is amended by striking ''and'' at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting '', and'', and by adding at the end the following new paragraph:

''(29) to the extent provided in section 179B(e).''.

(2) Section 1245(a) of such Code is amended by inserting ''179B,'' after ''179A,'' both places it appears in paragraphs (2)(C) and (3)(C).

(3) Section 1250(b)(3) of such Code is amended by inserting before the period at the end of the first sentence ''or by section 179B''.

(4) Section 263(a)(1) of such Code is amended by striking ''or'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting '', or'', and by inserting after subparagraph (H) the following new subparagraph:

''(I) expenditures for which a deduction is allowed under section 179B.''.

(5) Section 312(k)(3)(B) of such Code is amended by striking ''or 179A'' each place it appears in the heading and text and inserting '', 179A, or 179B''.

(c) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 179A the following new item:

''Sec. 179B. Energy efficient commercial buildings deduction.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act in taxable years ending after such date.

SEC. 102. CREDIT FOR CONSTRUCTION OF NEW ENERGY EFFICIENT HOMES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following new section:

"SEC. 45G. NEW ENERGY EFFICIENT HOME CREDIT.

''(a) IN GENERAL.—For purposes of section 38, in the case of an eligible contractor with respect to a qualified new energy efficient home, the credit determined under this section for the taxable year with respect to such home is an amount equal to the aggregate adjusted bases of all energy efficient property installed in such home during construction of such home.

''(b) LIMITATIONS.—

''(1) MAXIMUM CREDIT.—

''(A) IN GENERAL.—The credit allowed by this section with respect to a dwelling unit shall not exceed—

''(i) in the case of a dwelling unit described in clause (i) or (iii) of subsection (c)(3)(C), $1,000, and

''(ii) in the case of a dwelling unit described in subsection (c)(3)(C)(ii), $2,000.

''(B) PRIOR CREDIT AMOUNTS ON SAME DWELLING UNIT TAKEN INTO ACCOUNT.—If a

credit was allowed under subsection (a) with respect to a dwelling unit in 1 or more prior taxable years, the amount of the credit otherwise allowable for the taxable year with respect to such dwelling unit shall be reduced by the sum of the credits allowed under subsection (a) with respect to the dwelling unit for all prior taxable years.

''(2) COORDINATION WITH CERTAIN CREDITS.—For purposes of this section—

''(A) the basis of any property referred to in subsection (a) shall be reduced by that portion of the basis of any property which is attributable to qualified rehabilitation expenditures (as defined in section 47(c)(2)) or to the energy percentage of energy property (as determined under section 48(a)), and

''(B) expenditures taken into account under section 47 or 48(a) shall not be taken into account under this section.

''(c) DEFINITIONS.—For purposes of this section—

''(1) ELIGIBLE CONTRACTOR.—The term 'eligible contractor' means—

''(A) the person who constructed the qualified new energy efficient home, or

''(B) in the case of a qualified new energy efficient home which is a manufactured home, the manufactured home producer of such home.

If more than 1 person is described in subparagraph (A) or (B) with respect to any qualified new energy efficient home, such term means the person designated as such by the owner of such home.

''(2) ENERGY EFFICIENT PROPERTY.—The term 'energy efficient property' means any energy efficient building envelope component, and any energy efficient heating or cooling equipment or system, which can, individually or in combination with other components, result in a dwelling unit meeting the requirements of this section.

''(3) QUALIFIED NEW ENERGY EFFICIENT HOME.—The term 'qualified new energy efficient home' means a dwelling unit—

''(A) located in the United States,

''(B) the construction of which is substantially completed after December 31, 2003, and

''(C) which is—

''(i) certified to have a level of annual heating and cooling energy consumption which is at least 30 percent below the annual level of heating and cooling energy

consumption of a comparable dwelling unit constructed in accordance with the standards of chapter 4 of the 2003 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of this section, and for which the heating and cooling equipment efficiencies correspond to the minimum allowed under the regulations established by the Department of Energy pursuant to the National Appliance Energy Conservation Act of 1987 and in effect at the time of construction, and to have building envelope component improvements account for at least ⅓ of such 30 percent,

''(ii) certified to have a level of annual heating and cooling energy consumption which is at least 50 percent below such annual level and to have building envelope component improvements account for at least ⅕ of such 50 percent, or

''(iii) a manufactured home which—

''(I) conforms to Federal Manufactured Home Construction and Safety Standards (section 3280 of

title 24, Code of Federal Regulations), and

''(II) meets the applicable standards required by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

''(4) CONSTRUCTION.—The term 'construction' includes substantial reconstruction and rehabilitation.

''(5) ACQUIRE.—The term 'acquire' includes purchase and, in the case of reconstruction and rehabilitation, such term includes a binding written contract for such reconstruction or rehabilitation.

''(6) BUILDING ENVELOPE COMPONENT.—The term 'building envelope component' means—

''(A) any insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a dwelling unit when installed in or on such dwelling unit,

''(B) exterior windows (including skylights),

''(C) exterior doors, and

''(D) any metal roof installed on a dwelling unit, but only if such roof has appropriate pigmented coatings which—

''(i) are specifically and primarily designed to reduce the heat gain of such dwelling unit, and

''(ii) meet the Energy Star program requirements.

''(d) CERTIFICATION.—

''(1) METHOD OF CERTIFICATION.—A certification described in subsection (c)(3)(C) shall be determined in accordance with guidance prescribed by the Secretary, after consultation with the Secretary of Energy. Such guidance shall specify procedures and methods for calculating energy and cost savings.

''(2) FORM.—A certification described in subsection (c)(3)(C) shall be made in writing—

''(A) in a manner which specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their respective rated energy efficiency performance, and

''(B) in the case of a qualified new energy efficient home which is a manufactured home,

accompanied by such documentation as required by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

''(e) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.

''(f) APPLICATION OF SECTION.—Subsection (a) shall apply to qualified new energy efficient homes acquired during the period beginning on January 1, 2004, and ending on December 31, 2006.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) of the Internal Revenue Code of 1986 (relating to current year business credit) is amended by striking ''plus'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '', plus'', and by adding at the end the following new paragraph:

''(16) the new energy efficient home credit determined under section 45G(a).''.

(c) BASIS ADJUSTMENT.—Subsection (a) of section 1016 of the Internal Revenue Code of 1986, as amended

by section 101, is amended by striking ''and'' at the end of paragraph (28), by striking the period at the end of paragraph (29) and inserting '', and'', and by adding at the end the following new paragraph:

''(30) to the extent provided in section 45G(e), in the case of amounts with respect to which a credit has been allowed under section 45G.''.

(d) LIMITATION ON CARRYBACK.—Section 39(d) of the Internal Revenue Code of 1986 (relating to transition rules) is amended by adding at the end the following new paragraph:

''(11) NO CARRYBACK OF NEW ENERGY EFFICIENT HOME CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the new energy efficient home credit determined under section 45G(a) may be carried to a taxable year beginning before January 1, 2004.''.

(e) DEDUCTION FOR CERTAIN UNUSED BUSINESS CREDITS.—Section 196(c) of the Internal Revenue Code of 1986 (defining qualified business credits) is amended by striking ''and'' at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting '', and'', and by adding after paragraph (11) the following new paragraph:

''(12) the new energy efficient home credit determined under section 45G(a).''.

(f) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 45G. New energy efficient home credit.''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2003.

SEC. 103. INCENTIVE FOR CERTAIN ENERGY EFFICIENT PROPERTY USED IN BUSINESS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

''SEC. 199. ENERGY PROPERTY DEDUCTION.

''(a) IN GENERAL.—There shall be allowed as a deduction for the taxable year an amount equal to the sum of—

''(1) the amount determined under subsection (b) for each energy property of the taxpayer placed in service during such taxable year, and

''(2) the energy efficient residential rental building property deduction determined under subsection (e).

''(b) AMOUNT FOR ENERGY PROPERTY.—

''(1) IN GENERAL.—The amount determined under this subsection for the taxable year for each item of energy property shall equal the amount specified for such property in the following table:

Description of property:	Allowable amount is:
Elected solar hot water property	$1.00 per each kwh/year of savings.
Photovoltaic property	$4.50 per peak watt.
Advanced main air circulating fan or a Tier 1 natural gas, propane, or oil water heater.	$150.
Tier 2 energy-efficient building property	$900.
Tier 1 energy-efficient building property (other than an advanced main air circulating fan or a natural gas, propane, or oil water heater).	$450.

''(2) ELECTED SOLAR HOT WATER PROPERTY.—In the case of elected solar hot water property, the taxpayer may elect to substitute '$21 per annual Therm of natural gas savings' for '$1.00 per each kwh/year of savings' in the table contained in paragraph (1).

''(c) ENERGY PROPERTY DEFINED.—

''(1) IN GENERAL.—For purposes of this part, the term 'energy property' means any property—

''(A) which is—

''(i) solar energy property,

''(ii) Tier 2 energy-efficient building property, or

''(iii) Tier 1 energy-efficient building property,

"(B)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

"(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer,

"(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

"(D) which meets the performance and quality standards, and the certification requirements (if any), which—

"(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy or the Administrator of the Environmental Protection Agency, as appropriate),

"(ii) in the case of the energy efficiency ratio (EER) for central air conditioners and electric heat pumps—

"(I) require measurements to be based on published data which is tested by manufacturers at 95 degrees Fahrenheit, and

"(II) do not require ratings to be based on certified data of the Air Conditioning and Refrigeration Institute,

"(iii) in the case of geothermal heat pumps—

"(I) shall be based on testing under the conditions of ARI/ISO Standard 13256–1 for Water Source Heat Pumps or ARI 870 for Direct Expansion GeoExchange Heat Pumps (DX), as appropriate, and

"(II) shall include evidence that water heating services have been provided through a desuperheater or integrated water heating system connected to the storage water heater tank, and

"(iv) are in effect at the time of the acquisition of the property.

"(2) SOLAR ENERGY PROPERTY.—In the case of—

"(A) elected solar hot water property, the regulations under paragraph (1)(D) shall be based on the OG–300 Standard for the Annual

Performance of OG–300 Certified Systems of the Solar Rating and Certification Corporation, and

''(B) photovoltaics, such regulations shall be based on the ASTM Standard E 1036 and E 1036M–96 Standard Test Method for Electric Performance of Nonconcentrator Terrestrial Photovoltaic Modules and Arrays Using Reference Cells,

to the extent the Secretary determines such standards carry out the purposes of this section.

''(3) EXCEPTION.—Such term shall not include any property which is public utility property (as defined in section 46(f)(5) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

''(d) DEFINITIONS RELATING TO TYPES OF ENERGY PROPERTY.—For purposes of this section—

''(1) SOLAR ENERGY PROPERTY.—

''(A) IN GENERAL.—The term 'solar energy property' means equipment which uses solar energy—

''(i) to generate electricity, or

''(ii) to provide hot water for use in a structure.

''(B) ELECTED SOLAR HOT WATER PROPERTY.—

''(i) IN GENERAL.—The term 'elected solar hot water property' means property which is solar energy property by reason of subparagraph (A)(ii) and for which an election under this subparagraph is in effect.

''(ii) ELECTION.—For purposes of clause (i), a taxpayer may elect to treat property described in clause (i) as elected solar hot water property.

''(C) PHOTOVOLTAIC PROPERTY.—The term 'photovoltaic property' means solar energy property which uses a solar photovoltaic process to generate electricity.

''(D) SWIMMING POOLS, ETC., USED AS STORAGE MEDIUM.—The term 'solar energy property' shall not include a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage.

''(E) SOLAR PANELS.—No solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as solar energy

property solely because it constitutes a structural component of the structure on which it is installed.

''(2) TIER 2 ENERGY-EFFICIENT BUILDING PROPERTY.—The term 'Tier 2 energy-efficient building property' means—

''(A) an electric heat pump water heater which yields an energy factor of at least 2.0 in the standard Department of Energy test procedure,

''(B) an electric heat pump which has a heating seasonal performance factor (HSPF) of at least 9, a seasonal energy efficiency ratio (SEER) of at least 15, and an energy efficiency ratio (EER) of at least 12.5,

''(C) a geothermal heat pump which—

''(i) in the case of a closed loop product, has an energy efficiency ratio (EER) of at least 14.1 and a heating coefficient of performance (COP) of at least 3.3,

''(ii) in the case of an open loop product, has an energy efficiency ratio (EER) of at least 16.2 and a heating coefficient of performance (COP) of at least 3.6, and

"(iii) in the case of a direct expansion (DX) product, has an energy efficiency ratio (EER) of at least 15 and a heating coefficient of performance (COP) of at least 3.5,

"(D) a central air conditioner which has a seasonal energy efficiency ratio (SEER) of at least 15 and an energy efficiency ratio (EER) of at least 12.5, and

"(E) a natural gas, propane, or oil water heater which has an energy factor of at least 0.80.

"(3) TIER 1 ENERGY-EFFICIENT BUILDING PROPERTY.—The term 'Tier 1 energy-efficient building property' means—

"(A) an electric heat pump which has a heating system performance factor (HSPF) of at least 7.5, a cooling seasonal energy efficiency ratio (SEER) of at least 13.5, and an energy efficiency ratio (EER) of at least 11.5,

"(B) a central air conditioner which has a cooling seasonal energy efficiency ratio (SEER) of at least 13.5 and an energy efficiency ratio (EER) of at least 11.5,

"(C) a natural gas, propane, or oil water heater which has an energy factor of at least 0.65, and

"(D) an oil, natural gas, or propane furnace or hot water boiler which achieves at least 95 percent annual fuel utilization efficiency (AFUE).

"(4) ADVANCED MAIN AIR CIRCULATING FAN.—The term 'advanced main air circulating fan' means a fan used in a natural gas, propane, or oil furnace originally placed in service by the taxpayer during the taxable year, including a fan which uses a brushless permanent magnet motor or another type of motor which achieves similar or higher efficiency at full and half speed, as determined by the Secretary.

"(e) ENERGY EFFICIENT RESIDENTIAL RENTAL BUILDING PROPERTY DEDUCTION.—

"(1) DEDUCTION ALLOWED.—For purposes of subsection (a)—

"(A) IN GENERAL.—The energy efficient residential rental building property deduction determined under this subsection is an amount equal to energy efficient residential rental build-

ing property expenditures made by a taxpayer for the taxable year.

''(B) MAXIMUM AMOUNT OF DEDUCTION.—The amount of energy efficient residential rental building property expenditures taken into account under subparagraph (A) with respect to each dwelling unit shall not exceed—

''(i) $6,000 in the case of a percentage reduction of 50 percent as determined under paragraph (2)(B), and

''(ii) $12,000 times the percentage reduction in the case of a percentage reduction of less than 50 percent as determined under paragraph (2)(B).

''(C) YEAR DEDUCTION ALLOWED.—The deduction under subparagraph (A) shall be allowed in the taxable year in which the construction, reconstruction, erection, or rehabilitation of the property is completed.

''(2) ENERGY EFFICIENT RESIDENTIAL RENTAL BUILDING PROPERTY EXPENDITURES.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'energy efficient residential rental building property expenditures' means an amount paid or incurred

in connection with construction, reconstruction, erection, or rehabilitation of energy efficient residential rental building property—

"(i) for which depreciation is allowable under section 167,

"(ii) which is located in the United States, and

"(iii) the construction, reconstruction, erection, or rehabilitation of which is completed by the taxpayer.

Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

"(B) ENERGY EFFICIENT RESIDENTIAL RENTAL BUILDING PROPERTY.—

"(i) IN GENERAL.—The term 'energy efficient residential rental building property' means any property which reduces total annual energy and power costs with respect to heating and cooling of the building by a percentage certified according to clause (ii).

"(ii) PROCEDURES.—

"(I) IN GENERAL.—For purposes of clause (i), energy usage and costs

shall be demonstrated by performance-based compliance.

''(II) PERFORMANCE-BASED COMPLIANCE.—Performance-based compliance shall be demonstrated by calculating the percent energy cost savings for heating and cooling, as applicable, with respect to a dwelling unit when compared to the original condition of the dwelling unit.

''(III) COMPUTER SOFTWARE.—Computer software shall be used in support of performance-based compliance under subclause (II) and such software shall meet all of the procedures and methods for calculating energy savings reductions which are promulgated by the Secretary of Energy. Such regulations on the specifications for software and verification protocols shall be based on the 2005 California Residential Alternative Calculation Method Approval Manual.

''(IV) CALCULATION REQUIREMENTS.—In calculating tradeoffs and

energy performance, the regulations prescribed under this clause shall prescribe for the taxable year the costs per unit of energy and power, such as kilowatt hour, kilowatt, gallon of fuel oil, and cubic foot or Btu of natural gas, which may be dependent on time of usage. Where a State has developed annual energy usage and cost reduction procedures based on time of usage costs for use in the performance standards of the State's building energy code prior to the effective date of this section, the State may use those annual energy usage and cost reduction procedures in lieu of those adopted by the Secretary.

''(V) APPROVAL OF SOFTWARE SUBMISSIONS.—The Secretary shall approve software submissions which comply with the requirements of subclause (III).

''(VI) PROCEDURES FOR INSPECTION AND TESTING OF HOMES.—The Secretary shall ensure that procedures

for the inspection and testing for compliance comply with the calculation requirements under subclause (IV) of this clause and clause (iv).

''(iii) DETERMINATIONS OF COMPLIANCE.—A determination of compliance with respect to energy efficient residential rental building property made for the purposes of this subparagraph shall be filed with the Secretary not later than 1 year after the date of such determination and shall include the TIN of the certifier, the address of the building in compliance, and the identity of the person for whom such determination was performed. Determinations of compliance filed with the Secretary shall be available for inspection by the Secretary of Energy.

''(iv) COMPLIANCE.—

''(I) IN GENERAL.—The Secretary, after consultation with the Secretary of Energy, shall establish requirements for certification and compliance procedures after examining the requirements for energy con-

sultants and home energy ratings providers specified by the Mortgage Industry National Home Energy Rating Standards.

''(II) INDIVIDUALS QUALIFIED TO DETERMINE COMPLIANCE.—The determination of compliance may be provided by a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agency (IPIA), or an accredited home energy rating system provider. All providers shall be accredited, or otherwise authorized to use approved energy performance measurement methods, by the Residential Energy Services Network (RESNET).

''(C) ALLOCATION OF DEDUCTION FOR PUBLIC PROPERTY.—In the case of energy efficient residential rental building property which is public property, the Secretary shall promulgate a regulation to allow the allocation of the deduction to the person primarily responsible for designing the improvements to the property in lieu of the public entity which is the owner

of such property. Such person shall be treated as the taxpayer for purposes of this subsection.

''(f) SPECIAL RULES.—For purposes of this section—

''(1) BASIS REDUCTION.—For purposes of this subtitle, if a deduction is allowed under this section with respect to any property, the basis of such property shall be reduced by the amount of the deduction so allowed.

''(2) DOUBLE BENEFIT.—Property which would, but for this paragraph, be eligible for deduction under more than one provision of this section shall be eligible only under one such provision, the provision specified by the taxpayer.

''(g) REGULATIONS.—The Secretary shall promulgate such regulations as necessary to take into account new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings under this section.

''(h) TERMINATION.—This section shall not apply with respect to—

''(1) any energy property placed in service after December 31, 2008 (December 31, 2005, in the case of Tier 1 energy-efficient building property), and

''(2) any energy efficient residential rental building property expenditures in connection with property—

''(A) placed in service after December 31, 2007, or

''(B) the construction, reconstruction, erection, or rehabilitation of which is not completed on or before December 31, 2007.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 48(a)(3)(A) of the Internal Revenue Code of 1986 is amended to read as follows:

''(A) which is equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage,''.

(2) Subparagraph (B) of section 168(e)(3) of such Code is amended—

(A) in clause (vi)(I)—

(i) by striking ''section 48(a)(3)'' and inserting ''section 199(d)(1)'', and

(ii) by striking ''clause (i)'' and inserting ''such subparagraph (A)'', and

(B) in the last sentence, by striking ''section 48(a)(3)'' and inserting ''section 199(c)(3)''.

(3) Section 1016(a) of such Code, as amended by section 102, is amended by striking ''and'' at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting '', and'', and by inserting the following new paragraph:

''(31) for amounts allowed as a deduction under section 199(a).''.

(c) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 199. Energy property deduction.''.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Energy out of amounts not already appropriated such sums as necessary to carry out this section.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 104. CREDIT FOR CERTAIN NONBUSINESS ENERGY PROPERTY.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of

1986 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

"SEC. 25C. NONBUSINESS ENERGY PROPERTY.

"(a) ALLOWANCE OF CREDIT.—

"(1) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

"(A) the amount determined under subsection (b) for each qualified energy property of the taxpayer placed in service during such taxable year, and

"(B) so much of the credit amount specified in paragraph (2) which does not exceed the expenditures made by the taxpayer in connection with the construction, reconstruction, erection, or rehabilitation of a dwelling unit of the taxpayer which results in the unit being a highly energy-efficient principal residence.

For purposes of subparagraph (B), the expenditures may include labor costs properly allocable to the on-site preparation, assembly, or original installation of such property.

''(2) CREDIT AMOUNT.—The credit amount with respect to a highly energy-efficient principal residence is—

''(A) $2,000 in the case of a percentage reduction of 50 percent as determined under subsection (c)(6)(A)(iii), and

''(B) $4,000 times the percentage reduction in the case of a percentage reduction of less than 50 percent as determined under subsection (c)(6)(A)(iii).

''(b) AMOUNT FOR QUALIFIED ENERGY PROPERTY.—

''(1) RESIDENTIAL ENERGY PROPERTY EXPENDITURES.—Except as provided in paragraph (2), the amount determined under this subsection for the taxable year for each item of qualified energy property shall equal the amount of residential energy property expenditures made by the taxpayer with respect to such property during such taxable year.

''(2) SOLAR HOT WATER PROPERTY; PHOTOVOLTAIC PROPERTY.—

''(A) IN GENERAL.—In the case of solar hot water property and photovoltaic property, the amount determined under this subsection for the taxable year shall equal the amount

specified for such property in the following table:

Description of property:	Allowable amount is:
Elected solar hot water property	35¢ per each kwh/year of savings.
Photovoltaic property	$1.50 per peak watt.

''(B) ELECTED SOLAR HOT WATER PROPERTY.—In the case of elected solar hot water property (as defined in section 199(d)(1)(B)), the taxpayer may elect to substitute '$7 per annual Therm of natural gas savings' for '35¢ per each kwh/year of savings' in the table contained in subparagraph (A).

''(3) MAXIMUM AMOUNT.—In the case of property described in the following table, the amount of expenditures taken into account under paragraph (1) and the amount determined under paragraph (2) for the taxable year for each item of qualified energy property with respect to a dwelling unit shall not exceed the amount specified for such property in such table:

"Description of property item:	Maximum allowable credit amount is:
Tier 2 energy-efficient building property	$300.
Advanced main air circulating fan or a Tier 1 natural gas, propane, or oil water heater.	$50.
Tier 1 energy-efficient building property (other than an advanced main air circulating fan or a natural gas, propane, or oil water heater).	$150.

"Description of property item:	Maximum allowable credit amount is:
Solar hot water property	$1,000.
Photovoltaic property	$6,000.

''(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) RESIDENTIAL ENERGY PROPERTY EXPENDITURES.—The term 'residential energy property expenditures' means expenditures made by the taxpayer for qualified energy property installed on or in connection with a dwelling unit which—

''(A) is located in the United States, and

''(B) is used as a principal residence.

Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

''(2) QUALIFIED ENERGY PROPERTY.—

''(A) IN GENERAL.—The term 'qualified energy property' means—

''(i) energy-efficient building property,

''(ii) solar hot water property, and

''(iii) photovoltaic property.

''(B) SWIMMING POOL, ETC., USED AS STORAGE MEDIUM; SOLAR PANELS.—For purposes of this paragraph, the provisions of subparagraphs (D) and (E) section 199(d)(1) shall apply.

"(C) REQUIRED STANDARDS.—Property described under subparagraph (A) shall meet the performance and quality standards and certification standards of paragraphs (1)(D) and (2) of section 199(c).

"(3) ENERGY-EFFICIENT BUILDING PROPERTY.—The term 'energy-efficient building property' has the same meaning given the terms 'Tier 2 energy-efficient property', 'Tier 1 energy-efficient property', and 'advanced main air circulating fan' in paragraphs (2), (3), and (4) of section 199(d), respectively.

"(4) SOLAR HOT WATER PROPERTY.—The term 'solar hot water property' means property which, when installed in connection with a structure, uses solar energy for the purpose of providing hot water for use within such structure and the performance of which is determined in accordance with section 199(c)(2)(A).

"(5) PHOTOVOLTAIC PROPERTY.—The term 'photovoltaic property' has the same meaning given such term in section 199(d)(1)(C).

"(6) HIGHLY ENERGY-EFFICIENT PRINCIPAL RESIDENCE.—

"(A) IN GENERAL.—Property is a highly energy-efficient principal residence if—

"(i) such property is located in the United States,

"(ii) the property is used as a principal residence, and

"(iii) the projected heating and cooling energy usage of such property, measured in terms of average annual energy cost to taxpayer, is reduced by a percentage certified according to subparagraph (C) in comparison to the energy cost of such property if expenditures made by the taxpayer with respect to energy efficient improvements to such property were not made.

"(B) PRINCIPAL RESIDENCE.—

"(i) IN GENERAL.—The term 'principal residence' has the same meaning as when used in section 121, except that—

"(I) no ownership requirement shall be imposed, and

"(II) the period for which a building is treated as used as a principal residence shall also include the

60-day period ending on the 1st day on which it would (but for this subparagraph) first be treated as used as a principal residence.

''(ii) MANUFACTURED HOUSING.—The term 'residence' shall include a dwelling unit which is a manufactured home conforming to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

''(C) CERTIFICATION PROCEDURES.—

''(i) IN GENERAL.—For purposes of subparagraph (A)(iii), energy usage shall be demonstrated by performance-based compliance.

''(ii) PERFORMANCE-BASED COMPLIANCE.—Performance-based compliance shall be demonstrated if the percent energy cost savings for heating and cooling is met with respect to a dwelling unit when compared to the original condition of the dwelling unit.

''(iii) COMPUTER SOFTWARE.—Computer software shall be used in support of performance-based compliance under

clause (ii) and such software shall meet all of the procedures and methods for calculating energy savings reductions which are promulgated by the Secretary of Energy. Such regulations on the specifications for software and verification protocols shall be based on the 2005 California Residential Alternative Calculation Method Approval Manual.

''(iv) CALCULATION REQUIREMENTS.—In calculating tradeoffs and energy performance, the regulations shall prescribe the costs per unit of energy and power, such as kilowatt hour, kilowatt, gallon of fuel oil, and cubic foot or Btu of natural gas, which may be dependent on time of usage. If a State has developed annual energy usage and cost reduction procedures based on time of usage costs for use in the performance standards of the State's building energy code before the effective date of this section, the State may use those annual energy usage and cost reduction procedures in lieu of those adopted by the Secretary.

''(v) APPROVAL OF SOFTWARE SUBMISSIONS.—The Secretary shall approve software submissions which comply with the calculation requirements of clause (iii).

''(vi) PROCEDURES FOR INSPECTION AND TESTING OF DWELLING UNITS.—The Secretary shall ensure that procedures for the inspection and testing for compliance comply with the calculation requirements under clause (iii) and subsection (d)(2).

''(d) SPECIAL RULES.—For purposes of this section—

''(1) DETERMINATIONS OF COMPLIANCE.—A determination of compliance made for the purposes of this section shall be filed with the Secretary within 1 year of the date of such determination and shall include the TIN of the certifier, the address of the building in compliance, and the identity of the person for whom such determination was performed. Determinations of compliance filed with the Secretary shall be available for inspection by the Secretary of Energy.

''(2) COMPLIANCE.—

''(A) IN GENERAL.—The Secretary, after consultation with the Secretary of Energy shall

establish requirements for certification and compliance procedures after examining the requirements for energy consultants and home energy ratings providers specified by the Mortgage Industry National Home Energy Rating Standards.

''(B) INDIVIDUALS QUALIFIED TO DETERMINE COMPLIANCE.—The determination of compliance may be provided by a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agency (IPIA), or an accredited home energy rating system provider. All providers shall be accredited, or otherwise authorized to use approved energy performance measurement methods, by the Residential Energy Services Network (RESNET).

''(3) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which if jointly occupied and used during any calendar year as a principal residence by 2 or more individuals the following rules shall apply:

''(A) The amount of the credit allowable under subsection (a) by reason of expenditures made during such calendar year by any of such

individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

''(B) There shall be allowable with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

''(4) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation and such credit shall be allocated pro rata to such individual.

''(5) CONDOMINIUMS.—

''(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which he owns, such individual shall be treated as having made his proportionate share of any expenditures of such association and any credit shall be allocated appropriately.

''(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as principal residences.

''(6) JOINT OWNERSHIP OF ENERGY ITEMS.—

''(A) IN GENERAL.—Any expenditure otherwise qualifying as an expenditure under this section shall not be treated as failing to so qualify merely because such expenditure was made with respect to 2 or more dwelling units.

''(B) LIMITS APPLIED SEPARATELY.—In the case of any expenditure described in subparagraph (A), the amount of the credit allowable under subsection (a) shall (subject to para-

graph (1)) be computed separately with respect to the amount of the expenditure made for each dwelling unit.

''(7) ALLOCATION IN CERTAIN CASES.—If less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

''(8) COORDINATION WITH OTHER CREDITS.—Property which would, but for this paragraph, be eligible for credit under more than one provision of this section shall be eligible only under one such provision, the provision specified by the taxpayer.

''(9) YEAR CREDIT ALLOWED.—The credit under subsection (a)(2) shall be allowed in the taxable year in which the percentage reduction with respect to the principal residence is certified.

''(10) WHEN EXPENDITURE MADE; AMOUNT OF EXPENDITURE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

''(B) EXPENDITURES PART OF BUILDING CONSTRUCTION.—In the case of an expenditure

in connection with the construction of a structure, such expenditure shall be treated as made when the original use of the constructed structure by the taxpayer begins.

''(11) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—

''(A) REDUCTION OF EXPENDITURES.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), for purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing.

''(ii) SUBSIDIZED ENERGY FINANCING.—For purposes of clause (i), the term 'subsidized energy financing' has the same meaning given such term in section 48(a)(4)(C).

''(B) DOLLAR LIMITS REDUCED.—The dollar amounts in the table contained in subsection (b)(3) with respect to each property purchased for such dwelling unit for any taxable year of such taxpayer shall be reduced proportionately by an amount equal to the sum of—

"(i) the amount of the expenditures made by the taxpayer during such taxable year with respect to such dwelling unit and not taken into account by reason of subparagraph (A), and

"(ii) the amount of any Federal, State, or local grant received by the taxpayer during such taxable year which is used to make residential energy property expenditures with respect to the dwelling unit and is not included in the gross income of such taxpayer.

"(C) EXCEPTION FOR STATE PROGRAMS.—Subparagraphs (A) and (B) shall not apply to expenditures made with respect to property for which the taxpayer has received a loan, State tax credit, or grant under any State energy program.

"(e) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

''(f) REGULATIONS.—The Secretary shall promulgate such regulations as necessary to take into account new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings under this section.

''(g) TERMINATION.—This section shall not apply with respect to any energy property placed in service after December 31, 2008 (December 31, 2005, in the case of Tier 1 energy-efficient building property).''.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 1016 of the Internal Revenue Code of 1986 as amended by section 103, is amended by striking ''and'' at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting '', and'', and by adding at the end the following new paragraph:

''(32) to the extent provided in section 25C(e), in the case of amounts with respect to which a credit has been allowed under section 25C.''.

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 25B the following new item:

''Sec. 25C. Nonbusiness energy property.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to expenditures made after December 31, 2003.

(2) ENERGY EFFICIENT BUILDING PROPERTY USED IN A PRINCIPAL RESIDENCE.—In the case of energy efficient building property, as defined in section 25B(c) of the Internal Revenue Code of 1986, as added by subsection (a), the amendments made by this section shall apply to expenditures made after March 31, 2003.

SEC. 105. ENERGY CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY.

(a) IN GENERAL.—Section 48(a)(3)(A) of the Internal Revenue Code of 1986 (defining energy property) is amended by striking ''or'' at the end of clause (i), by adding ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) combined heat and power system property,''.

(b) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Section 48 of the Internal Revenue Code of 1986 (relating to energy credit; reforestation credit) is amended by adding at the end the following new subsection:

''(c) COMBINED HEAT AND POWER SYSTEM PROPERTY.—For purposes of subsection (a)(3)(A)(iii)—

''(1) COMBINED HEAT AND POWER SYSTEM PROPERTY.—The term 'combined heat and power system property' means property comprising a system—

''(A) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

''(B) which has an electrical capacity of not more than 15 megawatts or a mechanical energy capacity of not more than 2,000 horsepower or an equivalent combination of electrical and mechanical energy capacities,

''(C) which produces—

''(i) at least 20 percent of its total useful energy in the form of thermal energy which is not used to produce electrical or mechanical power (or combination thereof), and

"(ii) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

"(D) the energy efficiency percentage of which exceeds 60 percent, and

"(E) which is placed in service before January 1, 2007.

"(2) SPECIAL RULES.—

"(A) ENERGY EFFICIENCY PERCENTAGE.—For purposes of this subsection, the energy efficiency percentage of a system is the fraction—

"(i) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and expected to be consumed in its normal application, and

"(ii) the denominator of which is the lower heating value of the fuel sources for the system.

"(B) DETERMINATIONS MADE ON BTU BASIS.—The energy efficiency percentage and the percentages under paragraph (1)(C) shall be determined on a Btu basis.

''(C) INPUT AND OUTPUT PROPERTY NOT INCLUDED.—The term 'combined heat and power system property' does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

''(D) PUBLIC UTILITY PROPERTY.—

''(i) ACCOUNTING RULE FOR PUBLIC UTILITY PROPERTY.—If the combined heat and power system property is public utility property (as defined in section 168(i)(10)), the taxpayer may only claim the credit under subsection (a) if, with respect to such property, the taxpayer uses a normalization method of accounting.

''(ii) CERTAIN EXCEPTION NOT TO APPLY.—The matter in subsection (a)(3) which follows subparagraph (D) thereof shall not apply to combined heat and power system property.

''(3) SYSTEMS USING BAGASSE.—If a system is designed to use bagasse for at least 90 percent of the energy source—

''(A) paragraph (1)(D) shall not apply, but

''(B) the amount of credit determined under subsection (a) with respect to such system shall not exceed the amount which bears the same ratio to such amount of credit (determined without regard to this paragraph) as the energy efficiency percentage of such system bears to 60 percent.''.

(c) EFFECTIVE DATE.—The amendments made by this subsection shall apply to periods after December 31, 2003, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 106. CREDIT FOR ENERGY EFFICIENT APPLIANCES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business-related credits), as amended by section 102, is amended by adding at the end the following new section:

''SEC. 45H. ENERGY EFFICIENT APPLIANCE CREDIT.

''(a) ALLOWANCE OF CREDIT.—For purposes of section 38, the energy efficient appliance credit determined under this section for the taxable year is an amount equal to the sum of—

''(1) the tier I appliance amount, and

''(2) the tier II appliance amount,

with respect to qualified energy efficient appliances produced by the taxpayer during the calendar year ending with or within the taxable year.

''(b) APPLIANCE AMOUNTS.—For purposes of subsection (a)—

''(1) TIER I APPLIANCE AMOUNT.—The tier I appliance amount is equal to—

''(A) $100, multiplied by

''(B) an amount (rounded to the nearest whole number) equal to the applicable percentage of the eligible production.

''(2) TIER II APPLIANCE AMOUNT.—The tier II appliance amount is equal to $150, multiplied by an amount equal to the eligible production reduced by the amount determined under paragraph (1)(B).

''(3) APPLICABLE PERCENTAGE.—The applicable percentage is the percentage determined by dividing the tier I appliances produced by the taxpayer during the calendar year by the sum of the tier I and tier II appliances so produced.

''(4) ELIGIBLE PRODUCTION.—The eligible production of qualified energy efficient appliances by the taxpayer for any calendar year is the excess of—

''(A) the number of such appliances which are produced by the taxpayer during such calendar year, over

''(B) 110 percent of the average annual number of such appliances which were produced by the taxpayer (or any predecessor) during the preceding 3-calendar year period.

''(c) QUALIFIED ENERGY EFFICIENT APPLIANCE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified energy efficient appliance' means any tier I appliance or tier II appliance which is produced in the United States.

''(2) TIER I APPLIANCE.—The term 'tier I appliance' means—

''(A) a clothes washer which is produced with at least a 1.50 MEF, and

''(B) a refrigerator which consumes at least 15 percent (20 percent in the case of a refrigerator produced after 2006) less kilowatt hours per year than the energy conservation standards for refrigerators promulgated by the Department of Energy and effective on July 1, 2001.

''(3) TIER II APPLIANCE.—The term 'tier II appliance' means a refrigerator produced before 2007

which consumes at least 20 percent less kilowatt hours per year than the energy conservation standards described in paragraph (2)(B).

''(4) CLOTHES WASHER.—The term 'clothes washer' means a residential clothes washer, including a residential style coin operated washer.

''(5) REFRIGERATOR.—The term 'refrigerator' means an automatic defrost refrigerator-freezer which has an internal volume of at least 16.5 cubic feet.

''(6) MEF.—The term 'MEF' means Modified Energy Factor (as determined by the Secretary of Energy).

''(7) PRODUCED.—The term 'produced' includes manufactured.

''(d) LIMITATION ON MAXIMUM CREDIT.—

''(1) IN GENERAL.—The amount of credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $60,000,000, reduced by the amount of the credit allowed under subsection (a) to the taxpayer (or any predecessor) for any prior taxable year.

''(2) LIMITATION BASED ON GROSS RECEIPTS.—The credit allowed under subsection (a) with respect to a taxpayer for the taxable year shall

not exceed an amount equal to 2 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year for which the credit is determined.

''(3) GROSS RECEIPTS.—For purposes of this subsection, the rules of paragraphs (2) and (3) of section 448(c) shall apply.

''(e) SPECIAL RULES.—For purposes of this section—

''(1) IN GENERAL.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.

''(2) CONTROLLED GROUPS.—

''(A) IN GENERAL.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as a single manufacturer.

''(B) INCLUSION OF FOREIGN CORPORATIONS.—For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 to this section, section 1563 shall be applied without regard to subsection (b)(2)(C) thereof.

''(f) VERIFICATION.—The taxpayer shall submit such information or certification as the Secretary, after con-

sultation with the Secretary of Energy, determines necessary to claim the credit amount under subsection (a).

''(g) TERMINATION.—This section shall not apply with respect to appliances produced after December 31, 2007.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) of the Internal Revenue Code of 1986 (relating to current year business credit), as amended by section 102, is amended by striking ''plus'' at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting '', plus'', and by adding at the end the following new paragraph:

''(17) the energy efficient appliance credit determined under section 45H(a).''.

(c) LIMITATION ON CARRYBACK.—Section 39(d) of the Internal Revenue Code of 1986 (relating to transition rules), as amended by section 102, is amended by adding at the end the following new paragraph:

''(12) NO CARRYBACK OF ENERGY EFFICIENT APPLIANCE CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the energy efficient appliance credit determined under section 45H(a) may be carried to a taxable year ending before January 1, 2004.''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986, as amended by section 102, is amended by adding at the end the following new item:

"Sec. 45H. Energy efficient appliance credit.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to appliances produced after December 31, 2003, in taxable years ending after such date.

TITLE II—ENERGY EFFICIENT PRODUCTS

SEC. 201. ENERGY CONSERVATION STANDARDS FOR ADDITIONAL PRODUCTS.

(a) DEFINITIONS.—Section 321 of the Energy Policy and Conservation Act (42 U.S.C. 6291) is amended—

(1) in paragraph (30)(S), by striking the period and adding at the end the following: "but does not include any lamp specifically designed to be used for special purpose applications and that is unlikely to be used in general purpose applications such as those described in subparagraph (D), and also does not include any lamp not described in subparagraph (D) that is excluded by the Secretary, by rule, because the lamp is designed for special applications and is unlikely to be used in general purpose applications."; and

(2) by adding at the end the following:

''(32) The term 'battery charger' means a device that charges batteries for consumer products and includes battery chargers embedded in other consumer products.

''(33) The term 'ceiling fan' means a nonportable device that is suspended from a ceiling for circulating air through the rotation of fan blades.

''(34) The term 'ceiling fan light kit' means equipment designed to provide light from a ceiling fan that can be—

''(A) integral, such that the equipment is attached to the ceiling fan prior to the time of retail sale; or

''(B) attachable, such that at the time of retail sale the equipment is not physically attached to the ceiling fan, but may be included inside the ceiling fan package at the time of sale or sold separately for subsequent attachment to the fan.

''(35) The term 'commercial refrigerators, freezers, and refrigerator-freezers' means refrigerators, freezers, or refrigerator-freezers that—

''(A) are not consumer products regulated under this Act; and

"(B) incorporate most components involved in the vapor-compression cycle and the refrigerated compartment in a single package.

"(36) The term 'external power supply' means an external power supply circuit that is used to convert household electric current into either DC current or lower-voltage AC current to operate a consumer product.

"(37) The term 'illuminated exit sign' means a sign that—

"(A) is designed to be permanently fixed in place to identify an exit; and

"(B) consists of an electrically powered integral light source that illuminates the legend 'EXIT' and any directional indicators and provides contrast between the legend, any directional indicators, and the background.

"(38)(A) Except as provided in subparagraph (B), the term 'distribution transformer' means a transformer that—

"(i) has an input voltage of 34.5 kilovolts or less;

"(ii) has an output voltage of 600 volts or less; and

''(iii) is rated for operation at a frequency of 60 Hertz.

''(B) The term 'distribution transformer' does not include—

''(i) transformers with multiple voltage taps, with the highest voltage tap equaling at least 20 percent more than the lowest voltage tap;

''(ii) transformers, such as those commonly known as drive transformers, rectifier transformers, auto-transformers, Uninterruptible Power System transformers, impedance transformers, harmonic transformers, regulating transformers, sealed and nonventilating transformers, machine tool transformers, welding transformers, grounding transformers, or testing transformers, that are designed to be used in a special purpose application and are unlikely to be used in general purpose applications; or

''(iii) any transformer not listed in clause (ii) that is excluded by the Secretary by rule because—

''(I) the transformer is designed for a special application;

"(II) the transformer is unlikely to be used in general purpose applications; and

"(III) the application of standards to the transformer would not result in significant energy savings.

"(39) The term 'low-voltage dry-type distribution transformer' means a distribution transformer that—

"(A) has an input voltage of 600 volts or less;

"(B) is air-cooled; and

"(C) does not use oil as a coolant.

"(40) The term 'standby mode' means the lowest power consumption mode that—

"(A) cannot be switched off or influenced by the user; and

"(B) may persist for an indefinite time when an appliance is connected to the main electricity supply and used in accordance with the manufacturer's instructions,

as defined on an individual product basis by the Secretary.

"(41) The term 'torchiere' means a portable electric lamp with a reflector bowl that directs light upward so as to give indirect illumination.

''(42) The term 'traffic signal module' means a standard 8-inch (200mm) or 12-inch (300mm) traffic signal indication, consisting of a light source, a lens, and all other parts necessary for operation, that communicates movement messages to drivers through red, amber, and green colors.

''(43) The term 'transformer' means a device consisting of 2 or more coils of insulated wire that transfers alternating current by electromagnetic induction from 1 coil to another to change the original voltage or current value.

''(44) The term 'unit heater' means a self-contained fan-type heater designed to be installed within the heated space, except that such term does not include a warm air furnace.''.

(b) TEST PROCEDURES.—Section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) is amended—

(1) in subsection (b), by adding at the end the following:

''(9) Test procedures for illuminated exit signs shall be based on the test method used under Version 2.0 of the Energy Star program of the Environmental Protection Agency for illuminated exit signs.

''(10) Test procedures for distribution transformers and low voltage dry-type distribution transformers shall be based on the 'Standard Test Method for Measuring the Energy Consumption of Distribution Transformers' prescribed by the National Electrical Manufacturers Association (NEMA TP 2–1998). The Secretary may review and revise this test procedure. For purposes of section 346(a), this test procedure shall be deemed to be testing requirements prescribed by the Secretary under section 346(a)(1) for distribution transformers for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

''(11) Test procedures for traffic signal modules shall be based on the test method used under the Energy Star program of the Environmental Protection Agency for traffic signal modules, as in effect on the date of enactment of this paragraph.

''(12) Test procedures for medium base compact fluorescent lamps shall be based on the test methods used under the October 30, 2003, version of the Energy Star program of the Environmental Protection Agency and Department of Energy for

compact fluorescent lamps. Covered products shall meet all test requirements for regulated parameters in section 325(bb). However, covered products may be marketed prior to completion of lamp life and lumen maintenance at 40 percent of rated life testing provided manufacturers document engineering predictions and analysis that support expected attainment of lumen maintenance at 40 percent rated life and lamp life time.

''(13) Air movement test procedures for ceiling fans shall be based on the test procedure contained in the Energy Star Program Requirements for Residential Ceiling Fans (Version 2.0) developed by the Environmental Protection Agency, unless pursuant to this section, the Secretary promulgates regulations establishing an alternative test procedure.''; and

(2) by adding at the end the following:

''(f) ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.—

''(1) IN GENERAL.—Not later than 2 years after the date of enactment of this subsection, the Secretary shall prescribe testing requirements for refrigerated bottled or canned beverage vending ma-

chines, and commercial refrigerators, freezers, and refrigerator-freezers.

''(2) BASIS.—The testing requirements shall be based on existing test procedures used in industry, to the extent practicable.''.

(c) NEW STANDARDS.—Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) is amended by adding at the end the following:

''(u) BATTERY CHARGER AND EXTERNAL POWER SUPPLY ELECTRIC ENERGY CONSUMPTION.—

''(1) INITIAL RULEMAKING.—(A) The Secretary shall, within 18 months after the date of enactment of this subsection, prescribe by notice and comment, definitions and test procedures for the power use of battery chargers and external power supplies. In establishing these test procedures, the Secretary shall consider, among other factors, existing definitions and test procedures used for measuring energy consumption in standby mode and other modes and assess the current and projected future market for battery chargers and external power supplies. This assessment shall include estimates of the significance of potential energy savings from technical improvements to these products and suggested product classes for standards. Prior to the end of this time

period, the Secretary shall hold a scoping workshop to discuss and receive comments on plans for developing energy conservation standards for energy use for these products.

''(B) The Secretary shall, within 3 years after the date of enactment of this subsection, issue a final rule that determines whether energy conservation standards shall be issued for battery chargers and external power supplies or classes thereof. For each product class, any such standards shall be set at the lowest level of energy use that—

''(i) meets the criteria and procedures of subsections (o), (p), (q), (r), (s), and (t); and

''(ii) will result in significant overall annual energy savings, considering both standby mode and other operating modes.

''(2) REVIEW OF STANDBY ENERGY USE IN COVERED PRODUCTS.—In determining pursuant to section 323 whether test procedures and energy conservation standards pursuant to this section should be revised, the Secretary shall consider, for covered products that are major sources of standby mode energy consumption, whether to incorporate standby mode into such test procedures and energy conservation standards, taking into account, among other

relevant factors, standby mode power consumption compared to overall product energy consumption.

''(3) RULEMAKING.—The Secretary shall not propose a standard under this section unless the Secretary has issued applicable test procedures for each product pursuant to section 323.

''(4) EFFECTIVE DATE.—Any standard issued under this subsection shall be applicable to products manufactured or imported 3 years after the date of issuance.

''(5) VOLUNTARY PROGRAMS.—The Secretary and the Administrator shall collaborate and develop programs, including programs pursuant to section 324A (relating to Energy Star Programs) and other voluntary industry agreements or codes of conduct, that are designed to reduce standby mode energy use.

''(v) VENDING MACHINES, AND COMMERCIAL REFRIGERATORS, FREEZERS, AND REFRIGERATOR-FREEZERS.—

''(1) IN GENERAL.—Not later than 3 years after the date on which testing requirements are prescribed by the Secretary pursuant to section 323(f), the Secretary shall prescribe, by rule, energy conservation standards for refrigerated bottled or

canned beverage vending machines, and commercial refrigerators, freezers, and refrigerator-freezers.

''(2) CRITERIA AND PROCEDURES.—In establishing standards under this subsection, the Secretary shall use the criteria and procedures contained in subsections (o) and (p).

''(3) APPLICABILITY.—Any standard prescribed under this subsection shall apply to products manufactured 3 years after the date of publication of a final rule establishing the standard.

''(w) ILLUMINATED EXIT SIGNS.—Illuminated exit signs manufactured on or after January 1, 2005, shall meet the Version 2.0 Energy Star Program performance requirements for illuminated exit signs prescribed by the Environmental Protection Agency.

''(x) TORCHIERES.—Torchieres manufactured on or after January 1, 2005—

''(1) shall consume not more than 190 watts of power; and

''(2) shall not be capable of operating with lamps that total more than 190 watts.

''(y) LOW VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS.—The efficiency of low voltage dry-type distribution transformers manufactured on or after January 1, 2005, shall be the Class I Efficiency Levels for dis-

tribution transformers specified in Table 4–2 of the 'Guide for Determining Energy Efficiency for Distribution Transformers' published by the National Electrical Manufacturers Association (NEMA TP–1–2002).

''(z) TRAFFIC SIGNAL MODULES.—Traffic signal modules manufactured on or after January 1, 2006, shall meet the performance requirements used under the Energy Star program of the Environmental Protection Agency for traffic signals, as in effect on the date of enactment of this subsection, and shall be installed with compatible, electrically connected signal control interface devices and conflict monitoring systems.

''(aa) UNIT HEATERS.—Unit heaters manufactured on or after the date that is 3 years after the date of enactment of this subsection shall be equipped with an intermittent ignition device and shall have either power venting or an automatic flue damper.

''(bb) MEDIUM BASE COMPACT FLUORESCENT LAMPS.—Bare lamp and covered lamp (no reflector) medium base compact fluorescent lamps manufactured on or after January 1, 2005, shall meet the following requirements prescribed by the August 9, 2001, version of the Energy Star Program Requirements for Compact Fluorescent Lamps, Energy Star Eligibility Criteria, Energy-Efficiency Specification issued by the Environmental Protec-

tion Agency and Department of Energy: minimum initial efficacy; lumen maintenance at 1000 hours; lumen maintenance at 40 percent of rated life; rapid cycle stress test; and lamp life. The Secretary may, by rule, establish requirements for color quality (CRI); power factor; operating frequency; and maximum allowable start time based on the requirements prescribed by the October 30, 2003, version of the Energy Star Program Requirements for Compact Fluorescent Lamps. The Secretary may, by rule, revise these requirements or establish other requirements considering energy savings, cost effectiveness, and consumer satisfaction.

''(cc) CEILING FANS AND CEILING FAN LIGHT KITS.—

''(1) CEILING FANS.—All ceiling fans manufactured on or after January 1, 2007, shall have—

''(A) lighting controls separate from fan speed controls;

''(B) adjustable speed controls (either more than 1 speed or variable speeds); and

''(C) the capability of reversible fan action, except (as determined by the Secretary by regulation)—

''(i) for fans sold for industrial applications;

''(ii) for fans sold for outdoor applications; and

''(iii) where safety standards would be violated by the use of the reversible mode.

''(2) CEILING FAN LIGHT KITS.—Ceiling fan light kits manufactured on or after January 1, 2007, shall—

''(A) meet the Energy Star Program Requirements for Residential Light Fixtures (Version 3.1) issued by the Environmental Protection Agency and be packaged with lamps to fill all sockets;

''(B) be packaged with screw-based compact fluorescent lamps to fill all sockets, with such lamps meeting the Energy Star Program Requirements for Compact Fluorescent Lamps (Version 3.0) issued by the Department of Energy; or

''(C) use and be packaged with light sources, other than compact fluorescent lamps, that meet the minimum efficacy requirements (as measured in lumens per watt) of the Energy Star Program Requirements for Compact Fluorescent Lamps (Version 3.0) issued by the Department of Energy.

''(3) ENERGY EFFICIENCY STANDARDS FOR CEILING FANS.—

''(A) IN GENERAL.—Notwithstanding any provision of this Act, the Secretary may consider, and prescribe, if the requirements of subsections (o) and (p) are met, energy efficiency or energy use standards (based on cubic feet per minute per watt or watts) for electricity used by ceiling fans to circulate air in a room.

''(B) EXEMPTIONS OR DIFFERENT STANDARDS.—In prescribing the standards, the Secretary shall consider—

''(i) exempting or setting different standards for certain product classes for which the primary standards are not technically feasible or economically justified; and

''(ii) establishing separate exempted product classes for highly decorative fans for which air movement performance is a secondary design feature.

''(C) EFFECTIVE DATE.—Any air movement standard prescribed under this subsection shall apply to products manufactured on or

after the date that is 3 years after publication of a final rule establishing the standard.

''(dd) EFFECTIVE DATE.—Section 327 shall apply—

''(1) to products for which standards are to be established under subsections (u) and (v) on the date on which a final rule is issued by the Department of Energy, except that any State or local standards prescribed or enacted for any such product prior to the date on which such final rule is issued shall not be preempted until the standard established under subsection (u) or (v) for that product takes effect; and

''(2) to products for which standards are established under subsections (w) through (bb) on the date of enactment of those subsections, except that any State or local standards prescribed or enacted prior to the date of enactment of those subsections shall not be preempted until the standards established under subsections (w) through (bb) take effect.''.

(d) RESIDENTIAL FURNACE FANS.—Section 325(f)(3) of the Energy Policy and Conservation Act (42 U.S.C. 6295(f)(3)) is amended by adding the following new subparagraph at the end:

''(D) Notwithstanding any provision of this Act, the Secretary may consider, and prescribe, if the requirements of subsection (o) of this section are met, energy efficiency or energy use standards for electricity used for purposes of circulating air through duct work.''.

SEC. 202. ENERGY LABELING.

(a) RULEMAKING ON EFFECTIVENESS OF CONSUMER PRODUCT LABELING.—Section 324(a)(2) of the Energy Policy and Conservation Act (42 U.S.C. 6294(a)(2)) is amended by adding at the end the following:

''(F) During the period beginning not later than 90 days after the date of enactment of this subparagraph and ending not later than 2 years after the date of enactment of this subparagraph, the Commission shall initiate a rulemaking to consider—

''(i) the effectiveness of the current consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency; and

''(ii) changes to the labeling rules that would improve the effectiveness of consumer product labels.''.

(b) RULEMAKING ON LABELING FOR ADDITIONAL PRODUCTS.—Section 324(a) of the Energy Policy and

Conservation Act (42 U.S.C. 6294(a)) is amended by adding at the end the following:

''(5)(A) The Secretary or the Commission, as appropriate, may, for covered products referred to in subsections (u) through (aa) of section 325, prescribe, by rule, pursuant to this section, labeling requirements for the products, after a test procedure has been established pursuant to section 323.

''(B) In the case of products to which TP 1 standards under section 325(y) apply, labeling requirements shall be based on the 'Standard for the Labeling of Distribution Transformer Efficiency' prescribed by the National Electrical Manufacturers Association (NEMA TP 3) as in effect on the date of enactment of this paragraph.

''(6)(A) Not later than July 1, 2005, the Commission shall prescribe by rule, pursuant to this section, labeling requirements for the electricity used by ceiling fans to circulate air in a room.

''(B) Except as provided in subparagaph (C), the requirements shall be based on the test procedure and labeling requirements contained in the Energy Star Program Requirements for Residential Ceiling Fans (Version 2.0) issued by the Environmental Protection Agency.

''(C) The Commission shall not promulgate rules covering third party testing and other nonlabeling require-

ments unless the Commission determines the requirements are necessary to achieve compliance.

''(D) The rule shall apply to products manufactured after the latter of—

''(i) January 1, 2007; or

''(ii) the date that is 60 days after the date the final rule is promulgated.''.

TITLE III—ENERGY EFFICIENCY FEDERAL PROGRAMS

SEC. 301. PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

(a) REQUIREMENTS.—Part 3 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8251 et seq.) is amended by adding at the end the following:

''SEC. 552. FEDERAL PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

''(a) DEFINITIONS.—In this section:

''(1) ENERGY STAR PRODUCT.—The term 'Energy Star product' means a product that is rated for energy efficiency under an Energy Star program.

''(2) ENERGY STAR PROGRAM.—The term 'Energy Star program' means the program established by section 324A of the Energy Policy and Conservation Act.

''(3) EXECUTIVE AGENCY.—The term 'executive agency' has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

''(4) FEMP DESIGNATED PRODUCT.—The term 'FEMP designated product' means a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

''(b) PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.—

''(1) REQUIREMENT.—To meet the requirements of an executive agency for an energy consuming product, the head of the executive agency shall, except as provided in paragraph (2), procure—

''(A) an Energy Star product; or

''(B) a FEMP designated product.

''(2) EXCEPTIONS.—The head of an executive agency is not required to procure an Energy Star product or FEMP designated product under paragraph (1) if the head of the executive agency finds in writing that—

''(A) an Energy Star product or FEMP designated product is not cost-effective over the

life of the product taking energy cost savings into account; or

"(B) no Energy Star product or FEMP designated product is reasonably available that meets the functional requirements of the executive agency.

"(3) PROCUREMENT PLANNING.—The head of an executive agency shall incorporate into the specifications for all procurements involving energy consuming products and systems, including guide specifications, project specifications, and construction, renovation, and services contracts that include provision of energy consuming products and systems, and into the factors for the evaluation of offers received for the procurement, criteria for energy efficiency that are consistent with the criteria used for rating Energy Star products and for rating FEMP designated products.

"(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN FEDERAL CATALOGS.—Energy Star products and FEMP designated products shall be clearly identified and prominently displayed in any inventory or listing of products by the General Services Administration or the Defense Logistics Agency. The General Services Administration or the Defense Logistics Agency shall supply only Energy

Star products or FEMP designated products for all product categories covered by the Energy Star program or the Federal Energy Management Program, except in cases where the agency ordering a product specifies in writing that no Energy Star product or FEMP designated product is available to meet the buyer's functional requirements, or that no Energy Star product or FEMP designated product is cost-effective for the intended application over the life of the product, taking energy cost savings into account.

''(d) SPECIFIC PRODUCTS.—(1) In the case of electric motors of 1 to 500 horsepower, agencies shall select only premium efficient motors that meet a standard designated by the Secretary. The Secretary shall designate such a standard not later than 120 days after the date of the enactment of this section, after considering the recommendations of associated electric motor manufacturers and energy efficiency groups.

''(2) All Federal agencies are encouraged to take actions to maximize the efficiency of air conditioning and refrigeration equipment, including appropriate cleaning and maintenance, including the use of any system treatment or additive that will reduce the electricity consumed by air conditioning and refrigeration equipment. Any such treatment or additive must be—

''(A) determined by the Secretary to be effective in increasing the efficiency of air conditioning and refrigeration equipment without having an adverse impact on air conditioning performance (including cooling capacity) or equipment useful life;

''(B) determined by the Administrator of the Environmental Protection Agency to be environmentally safe; and

''(C) shown to increase seasonal energy efficiency ratio (SEER) or energy efficiency ratio (EER) when tested by the National Institute of Standards and Technology according to Department of Energy test procedures without causing any adverse impact on the system, system components, the refrigerant or lubricant, or other materials in the system.

Results of testing described in subparagraph (C) shall be published in the Federal Register for public review and comment. For purposes of this section, a hardware device or primary refrigerant shall not be considered an additive.

''(e) REGULATIONS.—Not later than 180 days after the date of the enactment of this section, the Secretary shall issue guidelines to carry out this section.''.

(b) CONFORMING AMENDMENT.—The table of contents of the National Energy Conservation Policy Act is

amended by inserting after the item relating to section 551 the following new item:

''Sec. 552. Federal procurement of energy efficient products.''.

SEC. 302. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) PERMANENT EXTENSION.—Effective September 30, 2003, section 801(c) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)) is repealed.

(b) PAYMENT OF COSTS.—Section 802 of the National Energy Conservation Policy Act (42 U.S.C. 8287a) is amended by inserting '', water, or wastewater treatment'' after ''payment of energy''.

(c) ENERGY SAVINGS.—Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended to read as follows:

''(2) The term 'energy savings' means a reduction in the cost of energy, water, or wastewater treatment, from a base cost established through a methodology set forth in the contract, used in an existing federally owned building or buildings or other federally owned facilities as a result of—

''(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

''(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for

other than a federally owned building or buildings or other federally owned facilities; or

"(C) the increased efficient use of existing water sources in either interior or exterior applications.".

(d) ENERGY SAVINGS CONTRACT.—Section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3)) is amended to read as follows:

"(3) The terms 'energy savings contract' and 'energy savings performance contract' mean a contract that provides for the performance of services for the design, acquisition, installation, testing, and, where appropriate, operation, maintenance, and repair, of an identified energy or water conservation measure or series of measures at 1 or more locations. Such contracts shall, with respect to an agency facility that is a public building (as such term is defined in section 3301 of title 40, United States Code), be in compliance with the prospectus requirements and procedures of section 3307 of title 40, United States Code.".

(e) ENERGY OR WATER CONSERVATION MEASURE.—Section 804(4) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(4)) is amended to read as follows:

''(4) The term 'energy or water conservation measure' means—

''(A) an energy conservation measure, as defined in section 551; or

''(B) a water conservation measure that improves the efficiency of water use, is life-cycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.''.

(f) REVIEW.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Energy shall complete a review of the Energy Savings Performance Contract program to identify statutory, regulatory, and administrative obstacles that prevent Federal agencies from fully utilizing the program. In addition, this review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verification requirements, accounting for energy use in determining savings, contracting requirements, including the identification of additional qualified contractors, and energy efficiency services covered. The Secretary shall report these findings to Congress and shall implement identified

administrative and regulatory changes to increase program flexibility and effectiveness to the extent that such changes are consistent with statutory authority.

(g) EXTENSION OF AUTHORITY.—Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2003, and before the date of enactment of this Act, shall be deemed to have been entered into pursuant to such section 801 as amended by subsection (a) of this section.

SEC. 303. FEDERAL BUILDING PERFORMANCE STANDARDS.

Section 305(a) of the Energy Conservation and Production Act (42 U.S.C. 6834(a)) is amended—

(1) in paragraph (2)(A), by striking ''CABO Model Energy Code, 1992'' and inserting ''the 2003 International Energy Conservation Code''; and

(2) by adding at the end the following:

''(3) REVISED FEDERAL BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Secretary of Energy shall establish, by rule, revised Federal building energy efficiency performance standards that require that—

"(i) if life-cycle cost-effective, for new Federal buildings—

"(I) such buildings be designed so as to achieve energy consumption levels at least 30 percent below those of the version current as of the date of enactment of this paragraph of the ASHRAE Standard or the International Energy Conservation Code, as appropriate; and

"(II) sustainable design principles are applied to the siting, design, and construction of all new and replacement buildings; and

"(ii) where water is used to achieve energy efficiency, water conservation technologies shall be applied to the extent they are life-cycle cost effective.

"(B) ADDITIONAL REVISIONS.—Not later than 1 year after the date of approval of each subsequent revision of the ASHRAE Standard or the International Energy Conservation Code, as appropriate, the Secretary of Energy shall determine, based on the cost-effectiveness of the requirements under the amendments, whether the revised standards estab-

lished under this paragraph should be updated to reflect the amendments.

''(C) STATEMENT ON COMPLIANCE OF NEW BUILDINGS.—In the budget request of the Federal agency for each fiscal year and each report submitted by the Federal agency under section 548(a) of the National Energy Conservation Policy Act (42 U.S.C. 8258(a)), the head of each Federal agency shall include—

''(i) a list of all new Federal buildings owned, operated, or controlled by the Federal agency; and

''(ii) a statement concerning whether the Federal buildings meet or exceed the revised standards established under this paragraph.''.

TITLE IV—PUBLIC HOUSING

SEC. 401. PUBLIC HOUSING CAPITAL FUND.

Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) is amended—

(1) in subsection (d)(1)—

(A) in subparagraph (I), by striking ''and'' at the end;

(B) in subparagraph (J), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

''(K) improvement of energy and water-use efficiency by installing fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2–1998 and A112.18.1–2000, or any revision thereto, applicable at the time of installation, and by increasing energy efficiency and water conservation by such other means as the Secretary determines are appropriate; and

''(L) integrated utility management and capital planning to maximize energy conservation and efficiency measures.''; and

(2) in subsection (e)(2)(C)—

(A) by striking ''The'' and inserting the following:

''(i) IN GENERAL.—The''; and

(B) by adding at the end the following:

''(ii) THIRD PARTY CONTRACTS.—Contracts described in clause (i) may include contracts for equipment conversions to less costly utility sources, projects with resident-paid utilities, and adjustments to

frozen base year consumption, including systems repaired to meet applicable building and safety codes and adjustments for occupancy rates increased by rehabilitation.

''(iii) TERM OF CONTRACT.—The total term of a contract described in clause (i) shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating system replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.''.

SEC. 402. GRANTS FOR ENERGY-CONSERVING IMPROVEMENTS FOR ASSISTED HOUSING.

Section 251(b)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8231(1)) is amended—

(1) by striking ''financed with loans'' and inserting ''assisted'';

(2) by inserting after ''1959,'' the following: ''which are eligible multifamily housing projects (as such term is defined in section 512 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note)) and are subject

to mortgage restructuring and rental assistance sufficiency plans under such Act,''; and

(3) by inserting after the period at the end of the first sentence the following new sentence: ''Such improvements may also include the installation of energy and water conserving fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2–1998 and A112.18.1–2000, or any revision thereto, applicable at the time of installation.''.

SEC. 403. ENERGY-EFFICIENT APPLIANCES.

In purchasing appliances, a public housing agency shall purchase energy-efficient appliances that are Energy Star products or FEMP-designated products, as such terms are defined in section 553 of the National Energy Conservation Policy Act (as amended by this title), unless the purchase of energy-efficient appliances is not cost-effective to the agency.

SEC. 404. ENERGY EFFICIENCY STANDARDS.

Section 109 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12709) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ''1 year after the date of the enactment of the Energy Policy Act of 1992'' and inserting ''September 30, 2004'';

(ii) in subparagraph (A), by striking ''and'' at the end;

(iii) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(iv) by adding at the end the following:

''(C) rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants under section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v), where such standards are determined to be cost effective by the Secretary of Housing and Urban Development.''; and

(B) in paragraph (2), by striking ''Council of American'' and all that follows through ''90.1–1989')'' and inserting ''2003 International Energy Conservation Code'';

(2) in subsection (b)—

(A) by striking ''within 1 year after the date of the enactment of the Energy Policy Act

of 1992'' and inserting ''by September 30, 2004''; and

(B) by striking ''CABO'' and all that follows through ''1989'' and inserting ''the 2003 International Energy Conservation Code''; and

(3) in subsection (c)—

(A) in the heading, by striking ''MODEL ENERGY CODE'' and inserting ''THE INTERNATIONAL ENERGY CONSERVATION CODE''; and

(B) by striking ''CABO'' and all that follows through ''1989'' and inserting ''the 2003 International Energy Conservation Code''.

TITLE V—RELIABILITY STANDARDS

SEC. 501. ELECTRIC RELIABILITY STANDARDS.

(a) IN GENERAL.—Part II of the Federal Power Act (16 U.S.C 824 et seq.) is amended by adding at the end the following:

''SEC. 215. ELECTRIC RELIABILITY.

''(a) DEFINITIONS.—For purposes of this section:

''(1) The term 'bulk-power system' means—

''(A) facilities and control systems necessary for operating an interconnected electric

energy transmission network (or any portion thereof); and

"(B) electric energy from generation facilities needed to maintain transmission system reliability.

The term does not include facilities used in the local distribution of electric energy.

"(2) The terms 'Electric Reliability Organization' and 'ERO' mean the organization certified by the Commission under subsection (c) the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.

"(3) The term 'reliability standard' means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

''(4) The term 'reliable operation' means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance or unanticipated failure of system elements.

''(5) The term 'Interconnection' means a geographic area in which the operation of bulk-power system components is synchronized such that the failure of 1 or more of such components may adversely affect the ability of the operators of other components within the system to maintain reliable operation of the facilities within their control.

''(6) The term 'transmission organization' means a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

''(7) The term 'regional entity' means an entity having enforcement authority pursuant to subsection (e)(4).

''(b) JURISDICTION AND APPLICABILITY.—(1) The Commission shall have jurisdiction, within the United

States, over the ERO certified by the Commission under subsection (c), any regional entities, and all users, owners and operators of the bulk-power system, including but not limited to the entities described in section 201(f), for purposes of approving reliability standards established under this section and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.

''(2) The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

''(c) CERTIFICATION.—Following the issuance of a Commission rule under subsection (b)(2), any person may submit an application to the Commission for certification as the Electric Reliability Organization. The Commission may certify 1 such ERO if the Commission determines that such ERO—

''(1) has the ability to develop and enforce, subject to subsection (e)(2), reliability standards that provide for an adequate level of reliability of the bulk-power system; and

''(2) has established rules that—

''(A) assure its independence of the users and owners and operators of the bulk-power

system, while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any ERO committee or subordinate organizational structure;

"(B) allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section;

"(C) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) (including limitations on activities, functions, or operations, or other appropriate sanctions);

"(D) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties; and

"(E) provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.

"(d) RELIABILITY STANDARDS.—(1) The Electric Reliability Organization shall file each reliability standard or modification to a reliability standard that it proposes

to be made effective under this section with the Commission.

''(2) The Commission may approve, by rule or order, a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.

''(3) The Electric Reliability Organization shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

''(4) The Commission shall remand to the Electric Reliability Organization for further consideration a pro-

posed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

''(5) The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

''(6) The final rule adopted under subsection (b)(2) shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization. Such transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted approved, or ordered by the Commission until—

''(A) the Commission finds a conflict exists between a reliability standard and any such provision;

''(B) the Commission orders a change to such provision pursuant to section 206 of this part; and

''(C) the ordered change becomes effective under this part.

If the Commission determines that a reliability standard needs to be changed as a result of such a conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5) of this subsection.

''(e) ENFORCEMENT.—(1) The ERO may impose, subject to paragraph (2), a penalty on a user or owner or operator of the bulk-power system for a violation of a reliability standard approved by the Commission under subsection (d) if the ERO, after notice and an opportunity for a hearing—

''(A) finds that the user or owner or operator has violated a reliability standard approved by the Commission under subsection (d); and

''(B) files notice and the record of the proceeding with the Commission.

''(2) A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after the ERO files with the Commission notice of the penalty and the record of proceedings. Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission. Application to the Commission for review, or the initiation of review by the

Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before the ERO and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate, remand to the ERO for further proceedings. The Commission shall implement expedited procedures for such hearings.

''(3) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a reliability standard.

''(4) The Commission shall issue regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing

reliability standards to the ERO and enforcing reliability standards under paragraph (1) if—

"(A) the regional entity is governed by—

"(i) an independent board;

"(ii) a balanced stakeholder board; or

"(iii) a combination independent and balanced stakeholder board;

"(B) the regional entity otherwise satisfies the provisions of subsection (c)(1) and (2); and

"(C) the agreement promotes effective and efficient administration of bulk-power system reliability.

The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved. Such regulation may provide that the Commission may assign the ERO's authority to enforce reliability standards under paragraph (1) directly to a regional entity consistent with the requirements of this paragraph.

"(5) The Commission may take such action as is necessary or appropriate against the ERO or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity.

''(6) Any penalty imposed under this section shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.

''(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZATION RULES.—The Electric Reliability Organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the ERO. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c).

''(g) RELIABILITY REPORTS.—The ERO shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.

''(h) COORDINATION WITH CANADA AND MEXICO.—The President is urged to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and

the effectiveness of the ERO in the United States and Canada or Mexico.

''(i) SAVINGS PROVISIONS.—(1) The ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

''(2) This section does not authorize the ERO or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

''(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard.

''(4) Within 90 days of the application of the Electric Reliability Organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the ERO.

''(5) The Commission, after consultation with the ERO and the State taking action, may stay the effectiveness of any State action, pending the Commission's issuance of a final order.

''(j) REGIONAL ADVISORY BODIES.—The Commission shall establish a regional advisory body on the petition of at least ⅔ of the States within a region that have more than ½ of their electric load served within the region. A regional advisory body shall be composed of 1 member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the Electric Reliability Organization, a regional entity, or the Commission regarding the governance of an existing or proposed regional entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.

''(k) ALASKA AND HAWAII.—The provisions of this section do not apply to Alaska or Hawaii.''.

(b) STATUS OF ERO.—The Electric Reliability Organization certified by the Federal Energy Regulatory Com-

mission under section 215(c) of the Federal Power Act and any regional entity delegated enforcement authority pursuant to section 215(e)(4) of that Act are not departments, agencies, or instrumentalities of the United States Government.

○